

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PAUL ROGERS,

Plaintiff,

v.

DOUG WADDINGTON, *et al*,

Defendants.

Case No. C05-5231FDB/KLS

ORDER DENYING MOTION FOR
ADDITIONAL TIME AND FOR
DISCLOSURE

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 1, 3 and 4. Before the Court is Plaintiff's motion for additional time to respond to Defendants' answer and request for disclosure. (Dkt. # 51). Upon review of Plaintiff's motion and the file, the Court finds for the reasons stated herein, that the motion should be denied.

DISCUSSION

On June 22, 2006, the U.S. Marshal Service made its first service attempt on Defendant Byron Jamtaas at the Stafford Creek Corrections Center (SCCC), using the name and address provided by Plaintiff. The process form was returned unexecuted with the notation "Person not at provided address." (Dkt. # 44). Plaintiff requested the Court for an order directing the U.S. Marshall to serve Defendant Jamtaas in person or, in the alternative, that the Marshal Service determine Defendant Jamtaas' current

1 address. (Dkt. # 47). The Court denied that motion, based on Plaintiff's obligation to provide a proper
2 service address. (Dkt. # 50). Plaintiff now requests additional time to reply to Defendants' Answer,
3 specifically requesting that he not be required to reply to the answer until such time as the Defendants
4 disclose an address where Byron Jamtaas can be served. (Dkt. # 51).

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6 **A. Plaintiff's Motion for Additional Time to File A Reply**

7 The federal rules do not contemplate a reply to an Answer. Pursuant to Rule 7(a) of the Federal
8 Rules of Civil Procedure:

9 There shall be a complaint and an answer; a reply to a counterclaim
10 denominated as such; an answer to a cross-claim, if the answer contains a
11 cross-claim; a third party complaint, if a person who was not an original
12 party is summoned under the provisions of Rule 14; and a third-party
answer, if a third party complaint is served. No other pleading shall be
allowed, except that the court may order a reply to an answer or a third
party-answer.

13 (Emphasis added). The Court has not ordered Plaintiff to reply to the Answer. Plaintiff is neither required
14 nor permitted to file a reply to the Answer. Therefore, no additional time is required and Plaintiff's motion
15 for additional time is moot.

16 **B. Plaintiff's Request for Disclosure of Service Address**

17 Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service of the summons and
18 complaint must be made upon a defendant within 120 days after the filing of the complaint. Unless the
19 plaintiff can show good cause for his failure to serve, the court shall dismiss the action without prejudice as
20 to that defendant or shall extend the time for service. Fed.R.Civ.P. 4(m). In cases involving a plaintiff
21 proceeding *in forma pauperis*, a United States Marshall, upon order of the court, shall serve the summons
22 and complaint. Fed.R.Civ.P. 4(c)(2). "[A]n incarcerated pro se plaintiff proceeding in forma pauperis is
23 entitled to rely on the U.S. Marshal for service of the summons and complaint and . . . should not be
24 penalized by having his action dismissed for failure to effect service where the U.S. Marshal or the court
25 clerk has failed to perform his duties.'" Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting
26 Puett v. Blanford, 912 F.2d 270, 275 (9th Cir. 1990)), *abrogated on other grounds by Sandin v. Connor*,
27 515 U.S. 472 (1995). "So long as the prisoner has furnished the information necessary to identify the
28 defendant, the marshal's failure to effect service is 'automatically good cause.'" Walker, 14 F.3d at 1422

1 (*quoting Sellers v. United States*, 902 F.2d 598, 603 (7th Cir. 1990)). However, where a pro se plaintiff
2 fails to provide the Marshal with accurate and sufficient information to effect service of the summons and
3 complaint, the court's sua sponte dismissal of the unserved defendant is appropriate. Walker, 14 F.3d at
4 1421-22.

5 Plaintiff requests disclosure of Defendant Jamtaas' address so that he can effect service, relying on
6 Fed. R. Civ. P. 26 and RCW 42.17, the Public Disclosure Act, as his prior attempts to serve Defendant
7 Jamtaas at SCCC have proved unsuccessful. Defendants advise that Byron Jamtaas is no longer employed
8 at the SCCC and is no longer in the employment of the Washington State Department of Corrections.
9 (Dkt. # 52, p. 3). Defendants state further that they have no knowledge of Defendant Jamtas' present
10 location and that they have advised Plaintiff of this in their Answer. (Id.; Dkt. # 46, p. 2, n. 1).

11 Despite Plaintiff's *in forma pauperis* status, he must supply the information necessary to identify
12 the defendants to be served. See Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994). Defendants have
13 affirmatively stated to the Court that they have no knowledge of Defendant Jamtaas' present location and
14 accordingly, Plaintiff's discovery request must be denied. Defendants can only be compelled to produce
15 information that is in their possession or control. If Plaintiff requires additional time to research and effect
16 service, the Court will consider a motion for a good cause extension of time for an appropriate period
17 pursuant to Fed.R.Civ.P. 4(m) for the purpose of serving Defendant Jamtaas.

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19 DATED this 2nd day of November, 2006.

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23 Karen L. Strombom
24 United States Magistrate Judge
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